

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation )  
Against: )**

**DEL B. DALTON, M.D. )**

**Case No. 8002016026296**

**Physician's and Surgeon's )  
Certificate No. A43378 )**

**Respondent )  
\_\_\_\_\_ )**

**DECISION**

**The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on October 17, 2017**

**IT IS SO ORDERED October 10, 2017.**

**MEDICAL BOARD OF CALIFORNIA**

**By: Kimberly Kirchmeyer  
Kimberly Kirchmeyer  
Executive Director**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 KAROLYN M. WESTFALL  
Deputy Attorney General  
4 State Bar No. 234540  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation/Petition to  
14 Revoke Probation Against:

15 **Del B. Dalton, M.D.**  
16 **566 Agua Vista Drive**  
**Chula Vista, CA 91914**

17 **Physician's and Surgeon's Certificate**  
**No. A 43378,**

18 Respondent.

Case No. 800-2016-026296

OAH No. 2017010520

**STIPULATED SURRENDER OF  
LICENSE AND DISCIPLINARY ORDER**

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Carolyn M.  
26 Westfall, Deputy Attorney General.

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2. Del B. Dalton, M.D. (Respondent) is represented in this proceeding by attorney Steven H. Zeigen, Esq., whose address is Rosenberg, Shpall, and Zeigen, 750 "B" Street, Suite 3210, San Diego, CA 92101.

3. On or about January 20, 1987, the Medical Board issued Physician's and Surgeon's Certificate No. A43378 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

## DISCIPLINARY HISTORY

4. In a previous disciplinary action entitled “*In the Matter of the Accusation Against DEL B. DALTON, M.D.*,” Case No. 04-1998-88520, the Board issued a Decision and Order, effective July 20, 2000, in which Respondent’s Physician and Surgeon’s Certificate No. A43378 was revoked. The Board’s Decision was briefly stayed to consider a Petition for Reconsideration filed by Respondent, which was denied, and the Board’s Decision and Order to revoke Respondent’s Physician and Surgeon’s Certificate No. A43378 became effective August 4, 2000.

5. In a subsequent action entitled, “*In the Matter of the Petition for Reinstatement of DEL B. DALTON*,” Case No. 800-2014-002800, the Board issued a Decision and Order, effective April 17, 2015, in which Respondent’s Physician and Surgeon’s Certificate No. A43378 was reinstated, revoked, and placed on probation for a period of seven (7) years subject to certain terms and conditions.

## JURISDICTION

6. On November 23, 2016, Accusation/Petition to Revoke Probation No. 800-2016-026296 was filed against Respondent before the Board. A true and correct copy of Accusation/Petition to Revoke Probation No. 800-2016-026296 and all other statutorily required documents were properly served on Respondent on November 23, 2016. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation. A true and correct copy of Accusation/Petition to Revoke Probation No. 800-2016-026296 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

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## CONTINGENCY

13. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Board “shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license.”

14. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval by the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

15. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General’s Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,

1 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or  
2 of any matter or matters related hereto.

### 3 **ADDITIONAL PROVISIONS**

4 16. This Stipulated Surrender of License and Disciplinary Order is intended by the parties  
5 herein to be an integrated writing representing the complete, final and exclusive embodiment of  
6 the agreements of the parties in the above-entitled matter.

7 17. The parties agree that copies of this Stipulated Surrender of License and Disciplinary  
8 Order, including copies of the signatures of the parties, may be used in lieu of original documents  
9 and signatures and, further, that such copies shall have the same force and effect as originals.

10 18. In consideration of the foregoing admissions and stipulations, the parties agree the  
11 Executive Director of the Board may, without further notice to or opportunity to be heard by  
12 Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

### 13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A43378, issued  
15 to Respondent Del B. Dalton, M.D., is surrendered and accepted by the Medical Board of  
16 California.

17 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A43378,  
18 and the acceptance of the surrendered license by the Board shall constitute the imposition of  
19 discipline against Respondent. This stipulation constitutes a record of the discipline and shall  
20 become a part of Respondent's license history with the Medical Board of California.

21 2. Respondent shall lose all rights and privileges as a physician and surgeon in  
22 California as of the effective date of the Board's Decision and Order.

23 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
24 issued, his wall certificate on or before the effective date of the Decision and Order.

25 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
26 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must  
27 comply with all the laws, regulations and procedures for reinstatement of a revoked license in  
28 effect at the time the petition is filed, and all of the charges and allegations contained in

1 Accusation/Petition to Revoke Probation No. 800-2016-026296 shall be deemed to be true,  
2 correct and admitted by Respondent when the Board determines whether to grant or deny the  
3 petition.

4 5. If Respondent should ever apply or reapply for a new license or certification, or  
5 petition for reinstatement of a license, by any other health care licensing agency in the State of  
6 California, all of the charges and allegations contained in Accusation/Petition to Revoke  
7 Probation, No. 800-2016-026296 shall be deemed to be true, correct, and admitted by Respondent  
8 for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict  
9 licensure.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and  
12 have fully discussed it with my attorney, Steven H. Zeigen, Esq. I understand the stipulation and  
13 the effect it will have on my Physician's and Surgeon's Certificate No. A43378. I enter into this  
14 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
15 be bound by the Decision and Order of the Medical Board of California.

16  
17 DATED: Sept. 12, 2017 Del Dalton  
18 DEL B. DALTON, M.D.  
19 Respondent

20 I have read and fully discussed with Respondent Del B. Dalton, M.D. the terms and  
21 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary  
22 Order. I approve its form and content.

23 DATED: 9/12/17 [Signature]  
24 STEVEN H. ZEIGEN, ESQ.  
25 Attorney for Respondent

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///

**ENDORSEMENT**

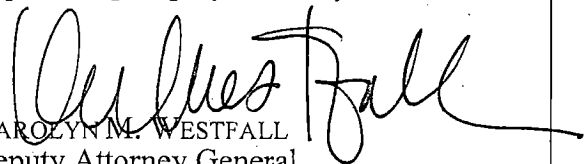
The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated:

9/15/17

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General

  
KAROLYN M. WESTFALL  
Deputy Attorney General  
*Attorneys for Complainant*

SD2016702558



**Exhibit A**

**Accusation/Petition to Revoke Probation No. 800-2016-026296**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 KAROLYN M. WESTFALL  
Deputy Attorney General  
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Telephone: (619) 738-9465  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation and Petition to  
14 Revoke Probation Against:

15 **Del B. Dalton, M.D.**  
16 **566 Agua Vista Drive**  
**Chula Vista, CA 91914**

17 **Physician's and Surgeon's Certificate**  
18 **No. A 43378,**

19 Respondent.

Case No. 800-2016-026296

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke  
23 Probation solely in her official capacity as the Executive Director of the Medical Board of  
24 California, Department of Consumer Affairs (Board).

25 2. On or about January 20, 1987, the Medical Board issued Physician's and Surgeon's  
26 Certificate No. A 43378 to Del B. Dalton, M.D. (respondent). The Physician's and Surgeon's  
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
28 expire on April 30, 2017, unless renewed.

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Nov. 23 20 16  
BY                      ANALYST

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1       7.     Section 822 of the Code states:

2             “If a licensing agency determines that its licentiate’s ability to practice his or  
3     her profession safely is impaired because the licentiate is mentally ill, or physically ill  
4     affecting competency, the licensing agency may take action by any one of the  
5     following methods:

6             “(a) Revoking the licentiate’s certificate or license.

7             “(b) Suspending the licentiate’s right to practice.

8             “(c) Placing the licentiate on probation.

9             “(d) Taking such other action in relation to the licentiate as the licensing agency  
10     in its discretion deems proper.

11             “The licensing agency shall not reinstate a revoked or suspended certificate or  
12     license until it has received competent evidence of the absence or control of the  
13     condition which caused its action and until it is satisfied that with due regard for the  
14     public health and safety the person’s right to practice his or her profession may be  
15     safely reinstated.

16       8.     Section 2227 of the Code states, in pertinent part:

17             “(a) A licensee whose matter has been heard by an administrative law judge of  
18     the Medical Quality Hearing Panel as designated in Section 11371 of the Government  
19     Code, or whose default has been entered, and who is found guilty, or who has entered  
20     into a stipulation for disciplinary action with the board, may, in accordance with the  
21     provisions of this chapter:

22             “(1) Have his or her license revoked upon order of the board.

23             “(2) Have his or her right to practice suspended for a period not to exceed one  
24     year upon order of the board.

25             “(3) Be placed on probation and be required to pay the costs of probation  
26     monitoring upon order of the board.

27     ///

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“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“ ”  
...

9. Section 2234 of the Code states, in pertinent part:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“ . . .

“(d) Incompetence.

“ ”  
...

**FIRST CAUSE FOR DISCIPLINE**

**(Incompetence)**

10. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43378 to disciplinary action under sections 2227 and 2234, subdivision (d), of the Code, in that he has demonstrated incompetence, as more particularly alleged hereinafter:

(a) In a previous disciplinary action entitled "*In the Matter of the Accusation Against DEL B. DALTON, M.D.*," Case No. 04-1998-88520, the Board issued a decision and order, effective July 20, 2000, in which respondent's Physician and Surgeon's Certificate No. A 43378 was revoked. The Board's Decision was briefly stayed to consider a Petition for Reconsideration filed by respondent, which was denied, and the Board's Decision and Order to revoke respondent's Physician and Surgeon's Certificate No. A 43378 became effective August 4, 2000.

(b) In a subsequent action entitled, “*In the Matter of the Petition for Reinstatement of DEL B. DALTON*,” Case No. 800-2014-002800, the Board issued a Decision and Order, effective April 17, 2015, in which respondent’s Physician and Surgeon’s Certificate No.

1 A 43378 was reinstated, revoked, and placed on probation for a period of seven (7) years  
2 with various terms and conditions, including as a condition precedent to practicing  
3 medicine, a requirement that he successfully complete the Physician Assessment and  
4 Clinical Education Program (PACE), including compliance with all of the program's  
5 recommendations.

6 (c) In compliance with the Board's Decision and Order in Case No. 800-2014-  
7 002800, respondent participated in Phase I of the PACE Program on or about September 1-  
8 2, 2015. Upon completion of the two days of intensive testing and evaluation by the PACE  
9 Program, respondent's performance was found to be "unsatisfactory and very concerning."  
10 In particular, respondent was found to have several deficiencies, including, but not limited  
11 to, the following:

- 12 1. Respondent passed only one (1) of the seven (7) clinical scenarios  
13 presented to him;
- 14 2. During the simulation exercise, respondent was unable to convey an  
15 adequate differential diagnosis, a sound approach to basic, common  
16 intraoperative events, and did not instill confidence that he could deliver  
17 safe anesthetic care;
- 18 3. Respondent scored in the 9<sup>th</sup> percentile of the Mechanisms of Disease  
19 Exam;
- 20 4. During the behavioral evaluation, respondent's insight was considered  
21 "poor to fair;" and
- 22 5. Respondent's independent psychiatric evaluation revealed he has a severe  
23 personality disorder and should be closely monitored.

24 (d) As a result of the various deficiencies noted in phase I, the PACE Program  
25 recommended that respondent undergo a complete neuropsychological evaluation, remain  
26 in therapy, and study intensely for three (3) to six (6) months prior to returning to complete  
27 phase II of the PACE Program.

28 ///

1 (e) In further compliance with the Board's Decision and Order in Case No. 800-  
2 2014-002800, to comply with the PACE Program and its recommendations, respondent  
3 participated in a fitness for duty neuropsychological evaluation conducted by Delia M.  
4 Silva, Psy.D., ABPP-CN, (Dr. Silva) on or about January 12, 2016. This comprehensive  
5 evaluation, which consisted of a clinical interview, review of medical and legal records, and  
6 neuropsychological testing, revealed that respondent had several deficiencies, including, but  
7 not limited to, the following:

- 8 1. A "normal" cognitive profile compared to the average person, but  
9 "mildly-to-moderately impaired" compared to other people of the same  
10 age and level of education;
- 11 2. A deficit in his fund of knowledge as well as his abstract reasoning;
- 12 3. Difficulties with effectively processing nuanced and complex information  
13 thoroughly, which can lead to faulty judgment; and
- 14 4. Externalization of blame to factors that do not account for his past  
15 behavior.

16 (f) Upon completion of her evaluation, on or about January 24, 2016, Dr. Silva  
17 reported her diagnostic impressions of respondent to be (1) History of Posttraumatic Stress  
18 Disorder, and (2) Antisocial Personality Traits. Dr. Silva further opined that respondent's  
19 "psychological functioning are more concerning than his cognitive abilities," concluding  
20 that respondent is at continued risk of harming his patients or engaging in poor judgment as  
21 a result of characterological factors. Due to his significant behavioral concerns and risky  
22 cognitive profile, Dr. Silva opined that respondent is not fit to practice medicine.

23 (g) In further compliance with the Board's Decision and Order in Case No. 800-  
24 2014-002800, respondent participated in phase II of the PACE Program on or about May  
25 16, 2016, through May 20, 2016. Upon completion of five days of intensive testing and  
26 evaluation by the PACE Program, respondent's performance was found to be  
27 "unsatisfactory." In particular, respondent failed both the repeat oral exam, as well as the  
28 repeat anesthesiology simulation. Respondent further demonstrated that he does not

1 possess a sufficient knowledge base, nor the appropriate communication or perioperative  
2 management skills that would be required to practice anesthesiology safely.

3 (h) Respondent's overall performance on the PACE comprehensive, seven (7) day  
4 physician assessment was rated, "FAIL – Category 4," signifying a poor performance that  
5 is not compatible with overall physician competency and safe practice..

6 **FIRST CAUSE TO REVOKE PROBATION**

7 **(Failure to Successfully Complete Clinical Training Program)**

8 11. At all times after the effective date of respondent's probation in Case No.  
9 800-2014-002800, Condition A stated:

10 **"A. Clinical Training Program (Condition Precedent):** Within 60  
11 calendar days of the effective date of this Decision, Petitioner shall enroll in a  
12 clinical training or educational program equivalent to the Physician Assessment  
13 and Clinical Education Program (PACE) offered at the University of California -  
14 San Diego School of Medicine Program (Program). Petitioner shall successfully  
15 complete the Program not later than six months after Petitioner's initial enrollment  
16 unless the Medical Board or its designee agrees in writing to an extension of that  
17 time.

18 "The Program shall consist of a Comprehensive Assessment program  
19 comprised of a two-day assessment of Petitioner's physical and mental health;  
20 basic clinical and communication skills common to all clinicians; and medical  
21 knowledge, skill and judgment pertaining to internal medicine and anesthesiology,  
22 and at minimum, a 40-hour program of clinical education in the area of practice in  
23 Petitioner's residency and intended area of practice and which takes into account  
24 data obtained from the assessment, Decision(s), Accusation(s), and any other  
25 information that the Medical Board or its designee deems relevant. Petitioner shall  
26 pay all expenses associated with the Clinical Training Program.

27 "Based on Petitioner's performance and test results in the assessment  
28 and clinical education, the Program will advise the Medical Board or its designee



1 of its recommendation(s) for the scope and length of any additional educational or  
2 clinical training, treatment for any medical condition, treatment for any  
3 psychological condition, or anything else affecting Petitioner's practice of  
4 medicine. Petitioner shall comply with Program recommendations.

5 "At the completion of any additional educational or clinical training,  
6 Petitioner shall submit to and pass an examination. Determination as to whether  
7 Petitioner successfully completed the examination or successfully completed the  
8 Program is solely within the Program's jurisdiction.

9 "Petitioner shall not practice medicine until he has successfully completed  
10 the Program and has been so notified by the Medical Board or its designee in  
11 writing, except that Petitioner may practice in a clinical training program approved  
12 by the Medical Board or its designee. Petitioner's practice of medicine shall be  
13 restricted only to that which is required by the approved training program."

14 12. At all times after the effective date of respondent's probation in Case No.  
15 800-2014-002800, Condition S stated:

16 "S. Violation of Probation: Failure to fully comply with any term or condition  
17 of probation is a violation of probation. If Petitioner violates probation in any  
18 respect, after giving Petitioner notice and the opportunity to be heard, the Board  
19 may revoke probation and carry out the disciplinary order that was stayed. If an  
20 Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is  
21 filed against Petitioner during probation, the Board shall have continuing  
22 jurisdiction until the matter is final, and the period of probation shall be extended  
23 until the matter is final."

24 13. Respondent's probation in Case No. 800-2014-002800, is subject to revocation  
25 because he failed to successfully complete Probation Condition A, as more particularly alleged in  
26 Paragraphs 10 through 12, above, which are hereby incorporated by reference as if fully set forth  
27 herein.

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## **EXHIBIT A**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DEL B. DALTON,

Petitioner

Case No. 8002014002800

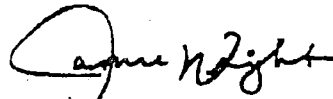
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 17, 2015.

IT IS SO ORDERED: March 20, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair  
Panel A

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is a true  
and correct copy of the original on file in this  
office.

  
Signature

Title

9/22/2016  
Date

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DEL B. DALTON,

Petitioner.

Case No. 800-2014-002800

OAH No. 2014070548

**PROPOSED DECISION**

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on November 5, 2014.

Karolyn M. Westfall, Deputy Attorney General, appeared on behalf of the people of the State of California pursuant to Government Code section 11522.

Steven Zeigen, Esq., Rosenberg, Shapall & Associates, represented Del B. Dalton, who was present during the hearing.

The record was closed on November 5, 2014.<sup>1</sup>

**FACTUAL FINDINGS**

*License History*

1. On January 20, 1987, the Medical Board, Department of Consumer Affairs, State of California (Medical Board), issued Physician's and Surgeon's Certificate No. A 43378 to Del B. Dalton (Petitioner).

2. On February 9, 1999, the Medical Board's Executive Officer filed Accusation, Case No. 04-98-88520.

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<sup>1</sup> During the hearing, Petitioner offered the transcript of the prior hearing [Exhibit G]. Complainant objected. Having considered the arguments of counsel, Exhibit G is admitted, in part, for purpose of reviewing Petitioner's testimony at the prior hearing.

On February 22, 1999, a Full Interim Suspension Order-No Practice was issued. Based on the foregoing, Petitioner was not allowed to practice medicine. On March 4, 1999, the Full Interim Suspension Order-No Practice was reduced to a Partial Interim Order, which allowed Petitioner to practice medicine but only if accompanied by a chaperone when seeing female patients. The Partial Interim Order remained in effect until the Medical Board's Decision became effective.

On July 16, 1999, a Full Penal Code Section 23 Suspension Order – No Practice was issued.

On August 3, 1999, an Amended Accusation was filed. In the Amended Accusation, it was alleged that, in 1998, over a six-month period, Petitioner engaged in sexual misconduct with five female patients; that he was grossly negligent in his treatment of these patients; that he engaged in repeated negligent acts; that he falsely advertised himself as a "Board Certified Medical Doctor"; that he engaged in dishonest and corrupt acts; and that he was convicted of three counts of sexual battery, one count of battery, and two counts of misleading advertising, each crime substantially related to the qualifications, functions or duties of a physician and surgeon.

On August 12, 1999, the Full Penal Code Section 23 Suspension Order was lifted.

In March and April 2000, after a 12-day hearing, on May 2, 2000, Administrative Law Judge Roy W. Hewitt (ALJ Hewitt) filed a Proposed Decision with the Medical Board. Thereafter an Amended Proposed Decision was filed that replaced patient names with initials.

On June 20, 2000, the Medical Board adopted the Amended Proposed Decision as its Decision in the matter and revoked Petitioner's Certificate, effective July 20, 2000.

The Medical Board granted a stay, and Petitioner filed a Petition for Reconsideration. The Medical Board denied this Petition and ordered that its Decision (revoking Petitioner's Certificate) become effective on August 4, 2000.

#### *The Decision*

3. The Medical Board adopted ALJ Hewitt's factual findings. These findings became a part of the Decision, and are, in part, summarized below.

Patient K.B. During an office visit on March 30, 1998, when K.B. and Petitioner were alone in an examining room, Petitioner approached K.B. when she attempted to leave the room, said nothing, and then reached down into her blouse, beneath her bra, and touched her bare breast. K.B. reported the matter to her husband when she arrived home that day, and she reported the matter to the authorities on March 26, 1999.

Petitioner denied K.B.'s claims. Petitioner asserted that K.B. abused prescription medications, forged prescriptions, and delayed reporting the purported misconduct, which, according to Petitioner, established that her allegations were untrue.

ALJ Hewitt observed that K.B.'s testimony about Petitioner's misconduct was consistent with the testimony of four other patients' accounts of Petitioner's misconduct with them and was credible.

Patient G.M. During an office visit on June 5, 1998, when Petitioner and G.M. were alone in an examining room, Petitioner got up, approached G.M., told G.M. that she had brown spots or sunspots on her face and neck, grabbed the top of her blouse, pulled it away, and reached down her blouse and under her bra. G.M. pushed Petitioner's hand away. G.M. told her husband about the incident when she arrived home later that day, and she reported it to the authorities the following day.

Petitioner denied G.M.'s claims. Petitioner claimed that he was very careful in his examination and treatment of G.M. because she was introduced to him as an attorney, and he claimed that G.M. lied about his conduct for financial gain.

ALJ Hewitt determined that Petitioner's denials and claims were not credible, that there was no medical justification for Petitioner grabbing G.M.'s breast, and that G.M. did not consent to the touching.

Patient B.H. During an office visit on July 16, 1998, when Petitioner and B.H. were alone in an examining room, Petitioner told B.H., "My, you are a beautiful woman," after which he pulled B.H. close, hugged her, told her about several sun spots he had observed, pulled B.H.'s top away from her neckline, and looked down her top at her chest. Later, during that examination, Petitioner touched B.H.'s lower leg and moved his hand upwards towards her buttocks before B.H. brushed his hand away. B.H. did not see Petitioner for an evaluation of sunspots, and he touched her without her consent. B.H. contacted her psychologist's office on her way home from the office visit and was told to file a complaint with law enforcement. B.H. did not make a report until she read that Petitioner had treated other women in a similar fashion.

Petitioner denied B.H.'s claims. Petitioner asserted B.H.'s claims were false and were in retaliation for Petitioner's refusal to provide her with a prescription for Vicodin. Petitioner denied looking down B.H.'s top; he claimed he touched her leg as a part of an examination for varicose veins.

ALJ Hewitt determined that Petitioner had not conducted a legitimate examination, and that he had engaged in sexual misconduct.

Patient C.B. During an office visit on October 8, 1998, Petitioner asked C.B. if he could examine her for purposes of hair removal treatment. Petitioner and C.B. were alone in an examining room. During the examination, Petitioner cupped each of C.B.'s breasts and squeezed each breast four to six times. After the examination, Petitioner and C.B. went to a

treatment room across the hallway where Petitioner administered an injection for C.B.'s back pain and provided her with a prescription for Vicodin. On October 16, 1998, C.B. returned to see Petitioner. Petitioner told C.B. that he was "stressed-out" and asked C.B. to massage his neck. C.B. did so. When C.B. stopped the massage, Petitioner asked to see C.B.'s C-section scar. After C.B. unbuttoned her jeans, Petitioner pulled C.B.'s jeans and panties down to her mid thighs, rubbed his fingers around the C-section scar, and touched her vaginal area five or six times. Later in the encounter, Petitioner grabbed C.B.'s hand, had her rub his erect penis, tried to French kiss C.B., and told C.B. that he wanted to make love to her. When C.B. tried to leave the treatment room, she discovered the door was locked. On her way home, C.B. called her attorney, who recommended that she contact law enforcement. C.B. followed her attorney's advice.

Petitioner admitted that C.B. briefly massaged his neck but otherwise denied C.B.'s claims. At the disciplinary hearing, C.B. admitted she had been an exotic dancer and model in the past, and Petitioner asserted that C.B.'s employment as a stripper and model revealed C.B.'s lack of moral character and supported his claim that she was the sexual aggressor.

ALJ Hewitt observed that Petitioner's "account is not even remotely credible." In this regard, ALJ Hewitt noted that Petitioner did not tell his wife, who was the officer manager, or other office staff members of C.B.'s purported sexual assault.

False and Misleading Advertising. In 1998, Petitioner authorized pamphlets that advertised his professional services to be bulk-mailed to Orange County residents. The pamphlets represented that Petitioner was a "Board Certified Medical Doctor." The business cards Petitioner kept in his reception area stated that he was "Board Certified." In fact, Petitioner was not board certified.

Prior Convictions At the time of the disciplinary hearing, Petitioner had been convicted of three counts of sexual battery, one count of battery, and two counts of misleading advertising. However, the criminal convictions were on appeal at the time of the disciplinary hearing, and the cause for discipline relating to those convictions was dismissed.

Costs Reasonable costs of investigation and prosecution were determined to be \$52,093.94.

The Decision revoked Physician's and Surgeon's Certificate No. A 43378, and imposed costs of \$52,093.94. The Decision became effective on August 4, 2000.

#### *Petition for Reinstatement and Supporting Documents*

4. On June 28, 2010, Petitioner filed his first Petition for Reinstatement (Petition). Administrative Law Judge James Ahler (ALJ Ahler) heard the matter on October 21, 2011. Effective January 6, 2012, the Medical Board adopted the Proposed Decision and denied the Petition.



5. Before the date of the hearing on the first Petition, there had been a decision on the appeal of Petitioner's criminal convictions.<sup>2</sup> The Court of Appeal granted the petition for writ of habeas corpus and remanded the matter to the Superior Court with directions that it set aside the judgment of conviction and grant Petitioner a new trial on all issues. To avoid retrial, in June 2004, Petitioner entered into a plea agreement with the Orange County District Attorney. Under that agreement, Mr. Dalton pled guilty to three counts of battery in violation of Penal Code section 242 and two counts of false advertising in violation of Penal Code section 651, subdivision (a), each count a misdemeanor. On July 6, 2007, pursuant to Penal Code section 1203.4, these convictions were expunged.

6. Findings 28 and 29 of the Medical Board's Decision and Order regarding the first Petition, stated, in part:

28. Mr. Dalton claimed he took "full responsibility" for his sexual misconduct with five patients. He did not do so. The mere expression of remorse does not demonstrate rehabilitation. Mr. Dalton's testimony in that regard was, at best, conclusory. He attempted to minimize the nature and extent of his misconduct. He quarreled with the factual conclusions contained in the Decision until he evidently determined that was not an effective and viable strategy, after which he "admitted" the wrong doing contained in the findings.

Mr. Dalton's character witnesses were unaware of the nature and extent of his misconduct.

Mr. Dalton's testimony focused on his post traumatic [sic] stress disorder, his substance abuse, and his recovery from alcoholism and drug addiction. Mr. Dalton did not satisfactorily explain how or why his post traumatic stress disorder and/or his substance abuse caused him to act out in sexual fashion or caused his willingness to lie when he was caught. He offered no insight into the reasons underlying his sexual misconduct, other than to assert that "I had very poor boundaries, and I now regret it."

Equally troubling was Mr. Dalton's explanation for the reason he did not disclose the fact of his criminal convictions when he

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<sup>2</sup> Notice is taken of the procedural history set forth *In re Dalton* (2002) 98 Cal.App.4th 958, which the California Supreme Court ordered not be published and cited for substantive purposes. The Appellate Division of the Superior Court affirmed Petitioner's convictions on appeal. However, the Court of Appeal, Fourth District, Division Three, granted the petition for writ of habeas corpus and remanded the matter to the Superior Court with directions that it set aside the judgment of conviction and grant Petitioner a new trial on all issues.

applied for a vehicle salesperson's licenses in 2008. He blamed Tipton Honda for the misinformation he provided to the Department of Motor Vehicles. He minimized the perceived consequences for not telling the truth. Mr. Dalton's responses on cross-examination related to those issues raised significant questions about his character for honesty and the extent to which his testimony in this proceeding should be believed.

Mr. Dalton's health care providers did not explain in a compelling fashion how or why the diagnoses of post traumatic Disorder and substance abuse were related to his sexual misconduct. Dr. Heidenfelder described these as "precipitating events" and "triggers to the events that led to the eventual loss of his professional medical license." Dr. Ayers did not comment specifically upon any sexual misconduct and lacked the expertise to do so. Dr. Duane Rogers believed that Mr. Dalton's abuse as a child resulted in a distortion and blurred image of love and that it altered Mr. Dalton's perception of the proper way to relate to others. But Dr. Rogers was an expert in the area of substance abuse and not in the area of sexual misconduct. The report authored by Dr. Martha Rogers, Ph.D., prepared in May 1999, that concluded that Mr. Dalton did not fit the profile of a sexual predator was not provided. A thorough evaluation by a competent disinterested evaluator of Mr. Dalton's sexual misconduct, the causes of it, and his recovery was not provided.

29. Mr. Dalton had the burden of proving by clear and convincing evidence that he has rehabilitated himself and that he is entitled to have his certificate reinstated.

The wrongdoing in which Mr. Dalton engaged about a dozen years ago was extremely serious – he engaged in sexual misconduct with patients under the guise of legitimate medical examination and treatment; when his misconduct was disclosed, he lied about it, claiming that his examinations and treatments were appropriate and that his patients were drug addicts, of poor character, greedy, and liars. Since then, Mr. Dalton has sought treatment for post traumatic [sic] stress disorder, drug addiction, and alcoholism. He has not sought specific treatment for sexual issues.

Mr. Dalton has been clean and sober since November 11, 2008. He is a valued member in his 12-step community and at his church. He has the support of his wife and son. However, this

evidence of rehabilitation does not support the reinstatement of his certificate. The petition must be denied.

*Second Petition for Reinstatement and Other Evidence in this Record*

7. Petitioner filed his second Petition, dated December 4, 2013. Attached to this Petition are his narrative statement, letters/declarations from John D. Ayers, M.D., Richard Heidenfelder, M.D., Duane Rogers, Psy.D., and Darryl Moore, Ph.D., a forensic psychological evaluation of Petitioner by Martha Rogers, Ph.D., attendance sheets from a variety of support groups, and documentation of completion of continuing medical education (CME).

Dr. Duane Rogers, Dr. Moore, Soon Dalton (Petitioner's wife), and Petitioner testified as witnesses in this proceeding.

Evaluation & Treatment

8. Dr. Martha Rogers performed a forensic psychological evaluation of Petitioner and issued a report dated May 18, 1999. The evaluation occurred prior to the hearing on the First Amended Accusation. "... on *ex parte application*, Mr. Burge requested and the Court ordered that the Petitioner was required to undergo evaluation, with cooperation from the Attorney General's Office for any additional information, with the report to be supplied to Mr. Hammond as soon as possible."<sup>3</sup> There is no reference to this report in the Decision on the First Amended Accusation; this report was not submitted, and Dr. Martha Rogers did not testify in the hearing on the first Petition.

Dr. Martha Rogers' assessment of Petitioner included, among other things, (1) review of the investigation reports from the Medical Board as well as from the Orange County Sheriff's Department; (2) review of documents from Petitioner's office provided by Soon Dalton; (3) interviews of the complaining witnesses, (4) interview of Petitioner separately, interview of Petitioner with his wife; interview by Dr. Martha Rogers and her colleague Wesley Maram, Ph.D.; (5) a visit by Dr. Martha Rogers to Petitioner's office; and (5) administration of diagnostic psychological tests to Petitioner. Because Dr. Martha Rogers was familiar with one of the witnesses, Dr. Martha Rogers recused herself and made no assessment regarding this witness; instead, she asked a colleague to do so. In addition, she contacted the Orange County District Attorney's Office investigator but did not get his cooperation. Dr. Martha Rogers was able to listen to some but not all of the audiotapes of four of the complaining witness. Some tapes were unavailable or inaudible.

It is noteworthy that, during interviews with Dr. Martha Rogers, Petitioner and his wife denied that Petitioner engaged in misconduct with any of these witnesses.

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<sup>3</sup> Report of Martha Rogers, Ph.D., dated May 19, 1999, page 1 (Exhibits 1 and F)

Based upon her assessment, Dr. Martha Rogers determined that Petitioner did not fit the profile of a sexual predator. In her report, she stated a number of conclusions, most notably:

2. *Based on all the information presently available to me, he does not appear to pose an immediate danger to the health and safety of others [emphasis added].* I think other factors operating that are more relevant than sexual motivation to understanding the complaints against him. ...

3. In my hours of contact with Dr. Dalton, my most prominent impression is that this is a man who has a low self-esteem; who needs to please others too much, who evidences poor personal boundaries, and who is in certain respects, surprisingly naïve about people's motivations. He is not "savvy". He's not very observant. He probably is easily manipulated. He depends too much on his wife to set the parameters of his practice. I don't see him as personality disordered, as narcissistic, as behaving "entitled," as evidencing the character traits that I most often associate with medical or mental health professionals who willfully take advantage of patients, who misuse their authority and position. I have interviewed a significant number of such individuals in my professional lifetime as well as hundreds of sex offenders. ...

[¶] ... [¶]

13. Dr. Dalton could benefit from individual or group psychological/psychiatric treatment that is geared to improving the recognition of his potential for poor boundaries and other problems with his patients, e.g., avoidance of inappropriate verbalizations, touching, and verbal as well as physical interactions. His treatment should also address any unrecognized and unacknowledged problems in his personal life, e.g., marital and family, self-esteem, management of anger [sic], impulsivity, poor communication and poor boundaries. ...

9. In support of his Petition, Petitioner obtained evaluations from Doctors Ayers and Heidenfelder and submitted their letters/declarations with this Petition..

10. In addition to the letter submitted with the second Petition, dated June 9, 2013, the evidence in this matter included Dr. Ayers' first declaration, dated May 24, 2010, that was submitted in support of the first Petition, as well as Petitioner's medical records from Dr. Ayers.

Dr. Ayers is a family practice physician who specializes in addiction medicine. His records for Petitioner are handwritten and difficult to read. After his *first* meeting with Petitioner on March 2, 2010, Dr. Ayers executed a declaration in support of the first Petition. Petitioner met with Dr. Ayers again on May 24, 2010, and Dr. Ayers executed a second declaration. Both declarations are the same with two different dates.

After *one meeting* with Petitioner, based on Petitioner's history, treatment and efforts at rehabilitation, Dr. Ayers concluded that Petitioner was safe to practice medicine.

Dr. Ayers noted that Petitioner had 11 years of abstinence, and, through the 11 years, he had built on a solid foundation of sobriety and recovery. In addition, Dr. Ayers stated that he had "*observed* [emphasis added] a man who has become a whole person, living a life based on principles of honesty, responsibility, integrity, loyalty and commitment to care for himself and his wife and children." Finally, Dr. Ayers stated: "In applying for reinstatement, I can *witness* [emphasis added] that Del Dalton has gone through the transformation of recovery to a better person than he was before his recovery began. He *appears* [emphasis added] an honest, mentally and physically healthy, and rehabilitated man." Dr. Ayers offered no basis(es) for the foregoing statements and opinions.

Petitioner submitted a letter/declaration from Dr. Ayers, dated June 9, 2013, with his second Petition. Prior to executing the letter in 2013, Dr. Ayers met with Petitioner eight times over a period of three years (2010 – 2013). Again, he concluded that Petitioner was safe to practice medicine; he described the distinction between Petitioner now and three years ago; and, finally, Dr. Ayers made recommendations to be considered if Petitioner's license is reinstated.

Though Petitioner may have obtained some benefit from treatment with Dr. Ayers, for the reasons stated in the foregoing paragraphs, the letter/declarations from Dr. Ayers, in and of themselves, are unreliable.

11. The evidence in this matter included Dr. Heidenfelder's first declaration, dated April 21, 2010, submitted in support of the first Petition, his declaration, dated October 29, 2013, and his letter, submitted with the second Petition, dated December 13, 2013.

In the 2010 declaration, Dr. Heidenfelder, a child/adolescent and adult psychiatrist, stated that Petitioner had treated with him since October 2007 "for issues surrounding his license revocation and precipitating events that occurred prior to his license revocation." Further, he stated:

Mr. Dalton has a history of Post Traumatic Stress Disorder and co-occurring Substance Dependence Disorder-which, in my opinion were triggers to the events that led to the eventual loss of his professional medical license. Prior to the loss of his medical license in 2000 for sexual misconduct, Mr. Dalton reported a traumatic childhood that resulted from his father's severe alcoholism and verbal abuse and a history of intermittent

severe depression, anxiety and self-medication with stimulants and alcohol. At the time of his misconduct, Dr. Dalton reports having severe depressive episodes and low self esteem and at that time was not actively seeking any treatment nor was aware of the extent of his emotional issues.

Since the revocation of his license and other substantial personal losses, Mr. Dalton has aggressively pursued treatment and recovery. Mr. Dalton has actively participated in a twelve-step recovery program for children of alcoholics, Alcoholics Anonymous, individual and family therapy in addition to ongoing substance abuse monitoring. Mr. Dalton has been clean and sober for the past 10 years and remains very active in all aspects of his recovery. Since 2007 he has been an active participant in a professional's recovery group with Duane Rogers, Psy.D. and has remained in therapy with John Milner since 2007.

I request your consideration for reinstatement and feel that the past 10 years have been sufficient time for recovery for Mr. Dalton to allow him to safely and appropriately again practice medicine. I have reviewed the very comprehensive evaluation, report completed by Martha Rogers, Ph.D., from May 1999, which, concluded that Mr. Dalton does not fit the profile of a sexual predator. It is my opinion, based on information available to me, that Mr. Dalton does not pose any risk to female patients.

In his letter attached to the second Petition, dated December 13, 2013, among other things, Dr. Heidenfelder discussed Petitioner's history of PTSD. Petitioner reported that, during his childhood, his father was abusive, often a violent alcoholic and a womanizer. As a child, he was frequently humiliated, often beaten, and occasionally threatened with death. He noted that, for six months prior to his arrest, Petitioner was "self medicating his stress disorder with alcohol and a stimulant diet drug, Phentermine. Stimulants often cause hypersexuality [sic]." At that time he was not aware of the extent of his emotional issues, so he did not seek treatment.

Further, Dr. Heidenfelder stated that Petitioner was involved in treatment with Dr. Moore; Petitioner was involved in a variety of 12-step programs; and Petitioner participated in Dr. Duane Rogers's monitoring group.

Dr. Heidenfelder stated, in part: "I believe Mr. Dalton realizes the consequences he endured, and the pain he caused, were due to his inappropriate behavior. He seems genuinely remorseful and contrite. It is my opinion that Mr. Dalton is now mentally healthy and able to appropriately practice medicine."

Finally, Dr. Heidenfelder noted that he had reviewed Dr. Martha Rogers's "very comprehensive evaluation/report; she concluded that he did not fit the profile of a sexual predator.

Based on all the information available to him, Dr. Heidenfelder concluded that Petitioner was safe to practice medicine and that he posed no risk to female patients. If his Certificate is reinstated, Dr. Heidenfelder recommended that Dr. Murray monitor Petitioner.

12. Dr. Duane Rogers submitted letters/declaration in support of Petitioner's first and this second Petition, and he testified as a witness in this proceeding. In addition, his medical records were submitted as an exhibit. Since September 2007, Petitioner has participated in Dr. Duane Rogers'<sup>4</sup> Recovering Professionals Group, a mental health, addiction and psychotherapy-monitoring group, facilitated by Dr. Duane Rogers as part of his private practice. Petitioner "requested monitoring services in the area of substance abuse/dependence disorder, and co-occurring emotional disorder, which resulted in revocation of his Certificate to practice medicine in California." Petitioner attended group twice a week, with at least one random urine test per month, for four years; thereafter he was reduced to once a week, which he continues to do. Since he began in 2007, Petitioner has been tested for drugs of abuse with a comprehensive test panel equivalent to the panels used in board diversion programs. All of the drug screens have been negative for substances.

Through the above-described process, Petitioner participated in recovery-oriented psychotherapy in order to deal with a primary emotional disorder. In 2007, Petitioner identified an addiction to stimulant medication. In late 2008, Petitioner identified himself as an alcoholic, an assessment with which Dr. Duane Rogers agreed. Since November 2008, Petitioner has maintained his sobriety from both medicinal stimulants and alcohol.

Since 2009, Petitioner has worked on coping and PTSD because of his family experiences as a child. Since 2009, within the foregoing context, Petitioner has worked on issues dealing with sex and his ability to interact appropriately with female patients in the professional environment. Since 2011, sexual relationships have been the focal point of his therapy. They have looked at the kinds of patients who filed complaints against Petitioner. They were vulnerable and had addictive personality behaviors. Once the patient profile was developed, Petitioner was able to focus on his "obsessive compulsive" sexual behaviors, and learn how to identify specific triggers and to avoid the situations that arose in the past.

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<sup>4</sup> Dr. Duane Rogers is licensed as a Marriage and Family Therapist, practicing in California since 2005. Prior to that, he was certified as an addiction counselor in 1987. He holds a masters' degree and a doctor of psychology.

From 1982 to 2008, he worked as a group facilitator with the Medical Board of California's Diversion Program. After the Diversion Program ceased operation, Dr. Duane Rogers' group founded the Pacific Assistance Group, and he continued facilitating group monitoring and therapy with medical and other previously licensed professionals.

In Dr. Duane Rogers' opinion, Petitioner has become more open and insightful into a deeper understanding of his behavior. Dr. Duane Rogers has had numerous opportunities to observe Petitioner in recovery and in the social functions that Dr. Duane Rogers sponsors outside the group for participants and their families.

Sixteen months after the hearing on the first Petition, Dr. Duane Rogers stated, in part: "I firmly believe in Mr. Dalton's ability to practice medicine safely." Dr. Duane Rogers has seen "no vestiges of that behavior that would make him a danger to the patient population. Not only has he maintained his sobriety but [sic] he has openly addressed the sexual issues that led to the inappropriate interactions with patients."

Finally, Dr. Duane Rogers concluded: "Based on my professional in group and recovery related social experiences with Mr. Dalton during the past almost six years, and given the individual and group focused work on the sexual issues with Dr. Moore, I can state, to a reasonable degree of therapeutic certainty, that Del Dalton is unlikely to repeat the past behaviors which resulted in the loss of his license."

13. After denial of the first Petition, in June 2012, Petitioner began treatment with Dr. Moore, a sex addiction specialist. Petitioner told Dr. Moore that he needed to see a sex addiction specialist because of the inappropriate behaviors that he engaged in during his practice and that those needed to be resolved to satisfy the Medical Board so that he could get his license back. During his treatment of Petitioner, in Dr. Moore's opinion, Petitioner was open and honest with him.

Between June 2012 and January 2013, Petitioner met with Dr. Moore twice a week, once individually and once in group therapy. The focus of the therapy has been "recognizing his lack of behavioral control, his lack of personal and professional boundaries and working on his understanding and identifying ethical boundaries. In this context we have delved into his personal history, which may have played a role in his acting out sexually. He has recognized his shame and guilt, and his defensive minimization of his behaviors, as well as attempts to cover up his actions to avoid more feelings of shame. He has made good progress in being open about his actions and the attendant consequences."

Dr. Moore worked with Petitioner to develop a relapse prevention plan to help him identify the triggers in the professional environment that might put him at risk. Also, the plan involved support in professional and community groups. They spoke about the importance of having third party chaperones in the office when he examined female patients. Petitioner and Dr. Moore reviewed similar publicized cases, which he could identify with and recognized as inappropriate. In Dr. Moore's opinion, Petitioner now realizes that even when he was aware his actions were professionally and socially inappropriate, he was unable to modify his behavior.

Dr. Moore has observed changes in Petitioner's personality. Initially, Petitioner resisted sharing negative information about him because he was fearful of being criticized. In Dr. Moore's opinion, this was based on his early history with his father. Now Petitioner is better able to express his feelings and emotions without resistance and without a lot of



coaching; he has less denial and rationalization about the accusations and behavior that occurred and is more open.

Based on his interaction with Petitioner for two and one-half years, Dr. Moore concluded that, to a reasonable degree of psychological certainty, he is safe to resume practice. He has seen no "red flags". In Dr. Moore's opinion, Petitioner has shown phenomenal insight into the reasons for his prior conduct; he presents little or no risk of replicating his prior behavior should his Certificate be reinstated.

#### Other Treatment

14. At least since 2004, Petitioner has participated in Alcoholics Anonymous, Adult Children of Alcoholics and sexual addiction 12-step programs and Celebrate Recover (a church sponsored program for addiction). Typically, he attends at least one program five days a week. In addition, he has attended a program at the Veterans' Administration Hospital for PTSD.

#### Testimony of Soon Dalton

15. Soon Dalton and Petitioner married in 1988, and they have an adult son. Though they divorced to shield her personal assets from malpractice plaintiffs, they live together. She is a registered nurse.

After completing his residency and practicing briefly as an anesthesiologist, Petitioner opened a Phen-Fen diet clinic; in addition, his practice included laser hair removal and pain management. Soon Dalton worked in this practice. Petitioner began taking Phentermine for weight loss. As he increased his dosage of Phentermine, his behavior changed; he became immature, irritable and hyperactive. Petitioner's wife described how he treated female patients; he was immature and flirtatious; he had a bloated ego, a sense of "grandiosity".

Soon Dalton explained that her husband's behavior changed since he stopped taking Phentermine; "it has been a long journey" but "she has seen improvement"; now, he is calm, grateful and at peace with himself; he socializes in a mature manner and attends church with her. He understands boundaries and follows rules.

#### Petitioner's Statement & Testimony

16. In addition to the statement attached to his first and second Petitions, Petitioner testified as a witness in this proceeding.

Petitioner admitted that he was an addict, that he has not taken Phentermine since 1998 and has not had a drink of alcohol since November 2008.

Most notably, during this hearing, Petitioner admitted that he engaged in sexual misconduct with the five patients; he admitted that he falsely advertised that he was board

certified. Finally, Petitioner admitted that he deliberately lied on his application to Tipton Honda because he was afraid that he would not be hired.

Petitioner testified that if his license is reinstated that he would not engage in "that sort of behavior" again. He now recognizes his issues, of which he was unaware at the time of the misconduct; he has obtained treatment; he is no longer on Phentermine or any other drugs; he has been clean and sober since November 2008.

Petitioner hopes the Medical Board will reinstate his license. If the Medical Board grants his Petition, he will practice as an anesthesiologist.

#### Continuing Education

17. Between October 2011 and November 2013, Petitioner took 56.5 hours of continuing medical education.

#### Costs

18. In the Decision on the First Amended Accusation, the Medical Board ordered Petitioner to pay its costs of investigation and enforcement in the amount of \$52,093.94. Petitioner testified that he believed that he had paid \$1,000 towards these costs but offered no evidence in support of his testimony.

### LEGAL CONCLUSIONS

#### *Burden and Standard of Proof*

1. In a proceeding for the restoration of a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.)

#### *Statutory and Regulatory Authority*

2. Business and Professions Code section 2307 provides in part:

(a) A person whose certificate . . . has been revoked . . . may petition the board for reinstatement or modification of penalty . . .

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board . . . which shall be acted upon in accordance with Section 2335.

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . . The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary. . . .

3. California Code of Regulations, title 16, section 1359 provides:

(a) A petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division.

(b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office

in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.

4. California Code of Regulations, title 16, section 1359 states, in part:

When considering a petition for reinstatement . . . pursuant to the provisions of Section 11522 of the Government Code, the division . . . shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

(e) Evidence, if any, of rehabilitation submitted by the applicant.

*Rehabilitation*

5. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of a petitioner's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

6. An alcoholic's rehabilitation is almost universally predicated on a choice to confront his problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. (*In re Menna*, *supra*, at 951.) Rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if three elements are established: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the individual has undergone a meaningful and sustained period of rehabilitation. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

7. Similarly, a mental disorder is entitled to mitigating weight if it causally contributed to the misconduct and if the disorder has since been cured or so controlled that it is unlikely to again lead to misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 197.)

8. Petitioner practiced as a physician for 14 years. The Medical Board revoked his Certificate in 2000 because he engaged in sexual misconduct with five patients under the guise of treatment and falsely advertised that he was board certified when he was not. His first Petition for Reinstatement was denied because he did not establish: (1) the nexus between PTSD and addiction and his sexual misconduct; (2) he had not obtained treatment from a sex addiction specialist; and (3) he did not establish that he possesses the character traits of honesty and integrity.

Petitioner suffers from PTSD as a consequence of treatment his father meted out prior to the time Petitioner turned 18 years of age. In addition, he is addicted to alcohol.

Since 2004, Petitioner has regularly participated in a variety of 12-step programs. Since 2007, he has participated in Recovering Professionals Group, a monitoring group of professional health care providers under the direction of Dr. Duane Rogers. Since 2012, Petitioner has participated in sustained treatment with a sex addiction specialist, both individual and group therapy. Of the people with whom he has treated, the most credible are Dr. Duane Rogers and Dr. Moore because he has spent continued sustained time with each of them. They are knowledgeable about his psychological issues, have observed him, and believe that he is safe to practice medicine.

It is clear from the evidence that Petitioner has sought treatment for the purpose of reinstatement of his Certificate, but he has benefitted from treatment. According to the evidence, Petitioner is clean and sober. He understands the issues that caused him to engage in the sexual misconduct with patients under the guise of treatment, and he has a relapse prevention plan in place.

There is reason to be concerned about Petitioner's honesty and integrity. Prior to the hearing in this matter, Petitioner did not accept responsibility for his misconduct, and he attacked the credibility of each of his accusers. He denied his role or was evasive when questioned about his misconduct. According to the evidence, he engaged in this misconduct because he was embarrassed and ashamed, and it was difficult for him to respond in a manner that subjected him to criticism. During the hearing in this matter, he admitted his sexual misconduct with patients; he admitted that he was dishonest in advertisement; in addition he admitted that he was dishonest on the application to Tipton Honda because he was concerned that he would not get a job.

#### *Cause Exists to Grant the Petition*

9. Petitioner established that he is sufficiently rehabilitated such that he is safe to practice medicine with proper terms and conditions precedent and a period of probation with appropriate terms and conditions.

## ORDER

I. The Petition to Reinstate Physician's and Surgeon's Certificate No. A 043378 of Del B. Dalton is granted.

II. Physician's and Surgeon's Certificate No. A 043378 issued to Del B. Dalton is reinstated, revoked and placed on probation for seven years on the following terms and conditions.

A. **Clinical Training Program (Condition Precedent)**

Within 60 calendar days of the effective date of this Decision, Petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine Program (Program). Petitioner shall successfully complete the Program not later than six months after Petitioner's initial enrollment unless the Medical Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to internal medicine and anesthesiology, and at minimum, a 40-hour program of clinical education in the area of practice in Petitioner's residency and intended area of practice and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Medical Board or its designee deems relevant. Petitioner shall pay all expenses associated with the Clinical Training Program.

Based on Petitioner's performance and test results in the assessment and clinical education, the Program will advise the Medical Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Petitioner shall submit to and pass an examination. Determination as to whether Petitioner successfully completed the examination or successfully completed the Program is solely within the Program's jurisdiction.

Petitioner shall not practice medicine until he has successfully completed the Program and has been so notified by the Medical Board or its designee in writing, except that Petitioner may practice in a clinical training program approved by the Medical Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

**B. Psychiatric Evaluation (Condition Precedent)**

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Medical Board or its designee, Petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Medical Board-appointed board certified psychiatrist, who shall consider any information provided by the Medical Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Medical Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Petitioner shall not practice medicine until this psychiatrist determines that it is safe for him to do so.

**C. Professional Boundaries Program**

Within 60 calendar days from the effective date of this Decision, Petitioner shall enroll in a professional boundaries program equivalent to the Professional Boundaries Program offered by the PACE Program at the University of California, San Diego School of Medicine (Program). At the Program's discretion, Petitioner shall undergo and complete the Program's assessment of Petitioner's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), the Amended Accusation(s) and any other information that the Medical Board or its designee deems relevant. The Program shall evaluate Petitioner at the end of the training, and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Medical Board or its designee.

Failure to complete the entire Program not later than six (6) months after Petitioner's initial enrollment shall constitute a violation of probation unless the Medical Board or its designee agrees in writing to a later time for completion. Based on Petitioner's performance in and evaluations from the assessment, education, and training, the Program shall advise the Medical Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Petitioner can practice medicine safely. Petitioner shall comply with Program recommendations. At the completion of the Program, Petitioner shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Medical Board or its designee. The Professional Boundaries Program shall be at Petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The Program has the authority to determine whether or not Petitioner successfully completed the Program.

A professional boundaries course taken after the acts that gave rise to the charges in the Amended Accusation, but prior to the effective date of this Decision may, in the sole discretion of the Medical Board or its designee, be accepted towards the fulfillment of this condition.

**D. Professionalism Program (Ethics Course)**

Within 60 calendar days of the effective date of this Decision, Petitioner shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations, section 1358. Petitioner shall participate in and successfully complete that Program. Petitioner shall provide any information and documents that the Program may deem pertinent. Petitioner shall successfully complete the classroom component of the Program not later than six (6) months after Petitioner's initial enrollment, and the longitudinal component of the Program not later than the time specified by the Program, but no later than one (1) year after attending the classroom component. The Professionalism Program shall be at Petitioner's expense and shall be in addition to the CME requirements for renewal of his Certificate.

A Professionalism Program taken after the acts that gave rise to the charges in the Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Medical Board or its designee, be accepted towards the fulfillment of this condition.

Petitioner shall submit a certification of successful completion to the Medical Board or its designee not later than 15 calendar days after



successfully completing the Program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

**E. Alcohol - Abstain From Use**

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If Petitioner has a confirmed positive biological fluid test for alcohol, Petitioner shall receive a notification from the Medical Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. Within 15 days of the notification to cease practice, the Medical Board shall file an Accusation and/or Petition to Revoke Probation. If Petitioner requests a hearing on the Accusation and/or Petition to Revoke Probation, the Medical Board shall provide Petitioner with a hearing within 30 days of the request, unless the Petitioner stipulates to a later hearing date. A decision shall be received from the Administrative Law Judge or the Medical Board within 15 days, unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Medical Board does not file an Accusation or Petition to Revoke Probation within 15 days of the issuance of the notification to cease practice or does not provide Petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

**F. Controlled Substances - Abstain From Use**

Petitioner shall abstain completely from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Petitioner shall notify the Medical Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If Petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the

use to the Medical Board or its designee, Petitioner shall receive a notification from the Medical Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an Accusation and/or a Petition to Revoke Probation. Within 15 days of notification to cease practice, the Medical Board shall file an Accusation and/or Petition to Revoke Probation. If the Petitioner requests a hearing on the Accusation and/or Petition to Revoke Probation, the Medical Board shall provide Petitioner with a hearing within 30 days of the request, unless Petitioner stipulates to a later hearing date. A decision shall be received from the Administrative Law Judge or the Medical Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Medical Board does not file an Accusation or Petition to Revoke Probation within 15 days of the issuance of the notification to cease practice or does not provide Petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

**G. Biological Fluid Testing**

Upon the request of the Medical Board or its designee, Petitioner shall submit to biological fluid testing immediately, at Petitioner's expense. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Medical Board or its designee. Prior to practicing medicine, Petitioner shall contract with a laboratory or service approved in advance by the Medical Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Medical Board or its designee within four hours of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Medical Board and Petitioner.

If Petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, Petitioner shall receive a notification from the Medical Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an Accusation and/or a Petition to Revoke Probation. Within 15 days of the notification to cease practice, the Medical Board shall file an Accusation and/or Petition to Revoke

Probation. If Petitioner requests a hearing on the Accusation and/or Petition to Revoke Probation, the Medical Board shall provide Petitioner with a hearing within 30 days of the request, unless Petitioner stipulates to a later hearing date. A decision shall be received from the Administrative Law Judge or the Medical Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Medical Board does not file an Accusation or Petition to Revoke Probation within 15 days of the issuance of the notification to cease practice or does not provide Petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

#### **H. Psychotherapy**

Within 60 calendar days of the effective date of this Decision, Petitioner shall submit to the Medical Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Medical Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Medical Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Medical Board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the Medical Board or its designee. The Medical Board or its designee may require Petitioner to undergo psychiatric evaluations by a Medical Board-appointed board certified psychiatrist. If, prior to the completion of probation, Petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the Medical Board shall retain continuing jurisdiction over Petitioner's certificate and the period of probation shall be extended until the Medical Board determines that Petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations.

**I. Third Party Chaperone**

During probation, Petitioner shall have a third party chaperone present while consulting, examining or treating female patients. Within 30 calendar days of the effective date of the Decision, Petitioner shall submit to the Medical Board or its designee, for prior approval, the name(s) of persons who will act as the third party chaperone.

If Petitioner fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, Petitioner shall receive a notification from the Medical Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility. Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s), the Amended Accusation(s), and fully understand the role of the third party chaperone.

Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Medical Board or its designee, and shall retain the log for the entire term of probation.

Petitioner is prohibited from terminating employment of a Medical Board-approved third party chaperone solely because that person provided information as required to the Medical Board or its designee.

If the third party chaperone resigns or is no longer available, within five calendar days of such resignation or unavailability, Petitioner shall submit to the Medical Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If Petitioner fails to obtain approval of a replacement chaperone within 60 calendar days of the resignation or unavailability of the chaperone, Petitioner shall receive a notification, from the Medical Board or its designee, to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of

medicine until a replacement chaperone is approved and assumes monitoring responsibility.

**J. Costs of Investigation and Enforcement**

Petitioner shall pay the Medical Board's costs of investigation and enforcement of the Amended Accusation against him in the amount of \$52,093.94. He shall be given credit for any funds he can establish that he has paid previously. Petitioner shall be permitted to pay these costs in a payment plan approved by the Medical Board, with payments to be completed no later than three months prior to the end of the probationary period.

**K. Notification**

Within seven days of the effective date of this Decision, Petitioner shall provide a true copy of the Decision on the First Amended Accusation, Decision on the first Petition as well as this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Petitioner, at any other facility where Petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

**L. Supervision of Physician Assistants**

During probation, Petitioner is prohibited from supervising physician assistants.

**M. Obey All Laws**

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

**N. Quarterly Declarations**

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

**O. General Probation Requirements**

***Compliance with Probation Unit***

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

***Address Changes***

At all times, Petitioner shall keep the Board informed of Petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

***Place of Practice***

Petitioner shall not engage in the practice of medicine in Petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

***License Renewal***

Petitioner shall maintain a current and renewed California physician's and surgeon's certificate.

***Travel or Residence Outside California***

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California, which lasts, or is contemplated to last, more than 30 calendar days.

In the event Petitioner should leave the State of California to reside or to practice, Petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

**P. Interview with the Board or its Designee**

Petitioner shall be available in person upon request for interviews either at Petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

**Q. Non-practice While on Probation**

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Petitioner's return to

practice. Non-practice is defined as any period of time Petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program, which has been approved by the Board or its designee, shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Petitioner's period of non-practice while on probation exceeds 18 calendar months, Petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (Condition A herein) prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

**R. Completion of Probation**

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Petitioner's certificate shall be fully restored.

**S. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If Petitioner violates probation in any respect, after giving Petitioner notice and the opportunity to be heard, the Board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Petitioner during probation, the Board

shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.


**T. License Surrender**

Following the effective date of this Decision, if Petitioner ceases practice due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may request to surrender his license. The Board reserves the right to evaluate Petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Petitioner shall, within 15 calendar days, deliver Petitioner's wallet and wall certificate to the Board or its designee, and Petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If Petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

**U. Probation Monitoring Costs**

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: February 26, 2015

  
VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings